

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 96-CR-80201

v.

HON. JOHN CORBETT O'MEARA

D-1 JACK WILLIAM TOCCO,

Defendant.

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**RESENTENCING MEMORANDUM**

This memorandum of re-sentencing complies with the September 6, 2002 Opinion and Order of the United States Court of Appeals for the Sixth Circuit and supports the findings and conclusions of this court with regard to its third sentencing of the defendant Jack William Tocco on December 16, 2003.

**History**

On November 13, 1998, the court sentenced the defendant to 12 months and one day on Counts 1, 2, and 6 of the Indictment, to be served concurrently. The court also imposed a term of supervised release of 24 months, on each count concurrent, with the special condition that the defendant perform 750 hours of community service, and imposed fines and costs totaling \$94,447.32. The court adopted the factual findings and guideline application in the presentence report and found that the total offense level was 22, Criminal History Category I, with a corresponding guideline range of 41 to 51 months. The court then departed downward four levels for the defendant's extraordinary community involvement, four levels for the defendant's extraordinary

health problems, as well as his age, and two levels for the health condition of his wife, for a total downward departure of 10 levels.

The defendant was released from FMC Rochester on November 18, 1999, and began serving his two-year term of supervised release.

On January 5, 2000, the Court of Appeals for the Sixth Circuit issued its opinion affirming the defendant's convictions but vacating his sentence and remanding for re-sentencing. In its opinion, the Court of Appeals directed the sentencing court to make findings with regard to which underlying criminal activity should be attributed to the defendant for calculating appropriate offense levels resulting from his conviction of the Count 1, RICO Conspiracy, and his conviction of Count 6, Conspiracy to Interfere with Commerce by Extortion. The Court of Appeals also directed the sentencing court to make findings supporting any departures it might find are justified and consistent with the decision of the Court of Appeals and to consider the term and conditions of any supervised release made part of the sentence. The mandate was issued on April 20, 2000.

The court held sentencing hearings on March 10, 2000; March 14, 2000; and April 4, 2000. At that time, the defense presented witnesses and documentary evidence as to the defendant's health, his wife's health condition, and the defendant's community service record. The government presented a witness as to the scope of the defendant's involvement in the charged offenses and his role in the offense.

On May 25, 2000, the court re-sentenced the defendant to 34 months on Counts 1, 2, and 6 of the Indictment, to be served concurrently. The court also reimposed a two-year term of supervised release on each count concurrent and reimposed fines and

costs totaling \$94,447.32. The court did not reimpose the special condition of supervised release requiring 750 hours of community service. The court, in a memorandum on resentencing, determined that the defendant's total offense level was 24, with a Criminal History Category of I, for a guideline imprisonment range of 51 to 63 months. In analyzing the defendant's motion for downward departure, the court found that the defendant's health needs as of May 2000 were not so extraordinary or requiring that such a departure as previously granted would be appropriate. The overarching analysis leading to the court's conclusion that it would not depart downward based upon the defendant's health was the fact that the defendant, from a medical and healthcare point of view, had an uneventful incarceration.

The court also reconsidered the two level departure based upon the defendant's spouse's mental and physical health problems. Based on the testimony and the government's cross examination, the court concluded that a downward departure would be inappropriate. The court did, however, depart downward four levels for the defendant's extraordinary community service; and the defendant was sentenced to 34 months, some of which had already been served.

The defendant, by order of the sentencing court, surrendered to the U.S. Marshal Service on April 21, 2000. Following his sentencing, he was incarcerated at FMC Rochester. The defendant was released from custody on November 21, 2001, to begin serving his term of supervised release.

On September 6, 2002, the Court of Appeals for the Sixth Circuit reversed the defendant's re-sentencing and remanded the case to the sentencing court to recalculate the defendant's Count 1 RICO Conspiracy base offense level and his Count 6 Hobbs

Act Conspiracy offense level. The court directed that the defendant's total offense level must be at least 25. The Appeals Court found that the defendant must be held accountable for the following underlying racketeering activities as relevant conduct for the purpose of his Count 1 RICO Conspiracy base offense level:

1. Frontier Hotel: Offense Level 6
2. Versaci Gambling Operation, with a four level aggravating role: Offense Level 16
3. Edgewater Hotel: Offense Level 6
4. Hobbs Act Conspiracy: Offense Level 21
5. One Act of Extortion: Offense Level 21

The court also directed that Count 6 should be calculated as part of the Count 1 RICO Conspiracy for relevant conduct purposes.

On February 14, 2003, the defendant filed a petition for *writ of certiorari* with the United States Supreme Court. The government waived its right to file a response. The case was distributed for conference on March 21, 2003. On March 13, 2003, a response was requested on behalf of the government by April 14, 2003. On April 10, 2003, the Court granted the government an extension to file a response until May 14, 2003.

The defendant's two-year term of supervised release expired on May 31, 2003; and the defendant was discharged from supervision.

On June 16, 2003, the United States Supreme Court denied the defendant's petition for *writ of certiorari*. On June 23, 2003, the United States Court of Appeals for the Sixth Circuit issued its mandate in this matter.

## **Compliance with the Sixth Circuit Opinion and Order**

### **Requirements**

More specifically, the Court of Appeals for the Sixth Circuit Opinion and Order required the following:

1. A four level aggravating role enhancement to its calculations of the offense level for the Versaci Gambling Operation in the Count 1 RICO Conspiracy, resulting in an offense level of 16 for that offense.
2. Including the Edgewater Hotel activities as relevant conduct in the Count 1 RICO Conspiracy. This would result in an offense level of six for that offense.
3. Including the Hobbs Act Conspiracy as relevant conduct in the Count 1 RICO Conspiracy. The Court of Appeals directed that the sentencing court must find that the defendant is accountable for at least one of the alleged acts of extortion. For that extortion act and any other extortion act the court finds the defendant accountable for, the court must also determine whether the defendant is accountable for any of the specific offense characteristics pursuant to U.S.S.G. §1B1.3.
4. The court must reassess the defendant's Count 6 conviction and whether the defendant conspired to commit the various acts of extortion charged in Count 6. The Appeals Court also instructed the sentencing court on remand to explain which act or acts of extortion it finds that the defendant conspired to commit. Any act of extortion that the defendant did conspire to commit should be included as relevant conduct for the purpose of calculating the defendant's Count 1 RICO Conspiracy base offense levels.
5. The court did not clearly err in finding that the Bowman murder conspiracy did not constitute an underlying racketeering offense for the purpose of calculating the defendant's Count 1 RICO Conspiracy offense level.

The government did not appeal from, and the Sixth Circuit did nothing to disturb, the court's departures downward at both the first and second sentencing of Mr. Tocco of four offense levels for his extraordinary work in the community.

### **Jurisdiction**

The defendant argues variously that this court lacks jurisdiction and that further proceedings would violate the constitutional prohibition of double jeopardy. The court rules that these arguments have no merit in its responses to objections below.

### **Rulings on Objections**

#### **Government's Objections**

Both the government and the defendant have filed objections to the Supplemental Presentence Report of the Probation Department dated November 12, 2003. The court will set out each objection and the court's response and ruling, as appropriate.

The government's objections, filed December 8, 2003, and the court's responses follow:

#### **Government's Objection Number 1:**

The report declares that "the Court must reassess the defendant's Count 6 conviction and whether the defendant conspired to commit the various acts of extortion charged in Count 6 (page 5, Supplemental Presentence Report dated November 12, 2003)." This statement is simply wrong, and it emphasizes the reasons that this particular defendant is to be sentenced for the third time.

#### **Response to Government's Objection Number 1:**

The above statement was taken verbatim from the Sixth Circuit's opinion filed on September 6, 2002, with respect to the Hobb's Act Conspiracy. It is also noted that

there are three other rulings the Court of Appeals made in regard to this matter which are also summarized on pages 4 and 5 of the Supplemental Presentence Report.

Government's Objection Number 2:

The jury's verdict and its affirmance by the trial Court and the Sixth Circuit has settled the issue. Defendant Jack W. Tocco conspired to commit the acts of extortion charged in Count 6. It is an unassailable principle of law that a conspirator is liable for the acts of his co-conspirators. Moreover, the Court of Appeals has specifically determined that defendant Jack W. Tocco had a managerial role in the extortion conspiracy.

Response to Government's Objection Number 2:

It is not an "unassailable principle of law." The court directs the government to U.S.S.G. § 1B1.3, Application Note 1 (1995 edition of the Guidelines Manual), as to the principles of relevant conduct scoring in regard to a conspiracy count. U.S.S.G. § 1B1.2, Application Note 5, gives the standard for multi-object conspiracies.

Government's Objection Number 3:

The court must review defendant Jack W. Tocco's role in the extortion of each and every individual identified in Count 6. Since the defendant was a manager and supervisor of the operation, it seems clear that he is responsible for the acts of his subordinates. This Court must score the relevant conduct as to each victim. The failure of the Presentence Report to determine an appropriate score makes this impossible. The only action undertaken in connection with the Presentence Report is the determination of the absolute minimum required by the Court of Appeals. There is no effort to resolve the issues for which the case was remanded, and once again, the primary purpose of the report seems to be an effort that speaks for defendant Jack W. Tocco.

Response to Government's Objection Number 3:

The report does not speak for the defendant (or the government). The government's calculations are included on page 7 and 11 of the report. It is the court's responsibility to resolve the issues on remand as directed by the Court of Appeals.

Government's Objection Number 4:

This Court is required to score the relevant conduct as it bears upon each victim identified in Count 6. The Court should issue an opinion on each and every victim similar to the methodology Judge Lawrence Zatkoff used in his Opinion on co-defendant Anthony Zerilli. The government's August 28, 2003 Motion for Re-Sentencing included Judge Zatkoff's Opinion and while the results are not binding upon this court, they are worthy of consideration. Indeed, should this Court choose to treat defendant Jack W. Tocco in a dramatically different fashion from defendant Anthony Zerilli, it is imperative that the parties and the public understand the reason for the disparate sentences for defendant Tocco.

Response to Government's Objection Number 4:

The court has made specific findings for each victim named in Count 6. Anthony Zerilli was in the car with Nove Tocco and Paul Corrado talking about their criminal activity. Defendant Tocco was not. Mr. Zerilli was convicted of five separate acts of extortion. Defendant Tocco was not.

Government's Objection Number 5:

The government contends that the appropriate offense level is 36.

Response to Government's Objection Number 5:

The Presentence Investigation Report notes the government's position, which is different from the court's.

Government's Objection Number 6:

The government states that the same analysis for Count 6 is applicable to Count 1 in the calculation of the scoring of the extortions.

Response to Government's Objection Number 6:

The court agrees.

Government's Objection Number 7:

The government has not challenged the medical information provided by the defendant. It would appear that Mr. Tocco's health is what one would expect from a



man of his age. He has some health problems, but they appear to be under control and do not fall outside the norm for a man of his age.

Response to Government's Objection Number 7:

The government's position is noted. The court discusses Mr. Tocco's health below.

Government's Objection Number 8:

As to the Frontier Hotel, the sentence imposed by this Court when it first sentenced Mr. Tocco was "imposed in violation of the law", U.S. v. Tocco, 200 F.3rd at 431. The sentence imposed by this Court when it sentenced Mr. Tocco for the second time, was likewise in violation of the law. This Court determined upon the basis of Mr. Nove Tocco's testimony that the defendant was involved in an effort to acquire a hidden interest in the Frontier Hotel. Indeed, the Sixth Circuit has declared that the Frontier Hotel must be included in an evaluation as to the appropriate score for Count 1. If the defendant was involved in the Frontier Hotel then it stands to reason that any proceeds from such action are forfeitable.

Response to Government's Objection Number 8:

The Frontier Hotel activity is included in the court's calculation.

Defendant's Objections

The defendant's objections filed December 1, 2003, and the court's responses follow:

Objection Number 1:

The Court is prevented from re-sentencing Jack W. Tocco because Tocco has completely served his sentence while his appeal was pending and before any mandate issued from Sixth Circuit.

Objection Number 2:

The law of the case doctrine prevents the Court from re-sentencing the defendant on Count 6 and prevents consideration of enhancements that the government seeks.

Objection Number 3:

The law of the case doctrine prohibits the court from attributing the Frontier Hotel offense to Tocco as a racketeering offense in Count 1.

Response to Objection Numbers 1, 2 and 3:

The Court did use the Frontier Hotel as a racketeering act during the defendant's second sentencing. The court finds the legal arguments made by defendant in Objections 1, 2, and 3 to be without merit.

Objection Number 4:

The defendant believes that § 2B3.3, rather than § 2B3.2 is the appropriate guideline to use in calculating the extortion acts.

Response to Objection Number 4:

Under § 2B3.3, Application Note 1, this section of the guidelines applies only to blackmail and similar forms of extortion where there clearly is no threat of violence to person or property. The court utilized § 2B3.2 in the previous two sentencings. The fact that the court may find that the defendant, under relevant conduct provisions, is or is not responsible for reasonably foreseeable acts of violence, etc., is a separate and distinct analysis. The court has previously found that § 2B3.2 is the proper guideline for all the defendants convicted of the extortion acts and so finds here.

Objection Number 5:

With respect to a downward departure, the defendant requests that if his position as to the seriousness of his health concerns is not accepted by the court or the government, he would request an evidentiary hearing.

Response to Objection Number 5:

See the court's analysis of defendant's health below.

Objection Number 6:

The defendant believes that to count the Hobbs Act Conspiracy and at least one act of extortion in the calculation of Count 1's guidelines, as mandated by the Court of Appeals, is impermissible double counting. As the Hobbs Act (Count 6) contains all the acts of extortion that the defendant would be accountable, and the Hobbs Act is then subsumed into Count 1, to count the same extortion act separately is not permitted under the structure of the guidelines.

Response to Objection Number 6:

The defendant is correct in his analysis of the application of the multiple count rules found in Chapter Three of the Manual. The defendant's position is the same position taken by the government during the various stages of these proceedings. The government has always grouped Count 6 for the individual acts of extortion into Count 1, the RICO Conspiracy. It has never calculated any other separate act of extortion.

As the Court of Appeals has mandated an alternative way, however, the court has included a separate act of extortion.

**Findings of Fact and Conclusions of Law**

The September 6, 2002 Opinion and Order directs this court hold Jack William Tocco responsible for at least one act of extortion related to his convictions under Count 1 and Count 6 of the Indictment.

The court concludes that the defendant will be held responsible for the 1991 and 1992 extortion of Jesus Morales by Nove Tocco and Paul Corrado and no other extortions.

With regard to the extortions of Robert Monroe, George Wierzba, John Johns, George Sophiea, Ramzi Yaldoo, George Yatooma, Sam Martin and Daniel Abraham, this court found in its Memorandum on Sentencing dated May 26, 2000 (for the second

sentencing of the defendant) that these extortions were not underlying offenses as to Jack Tocco because they were not as to him reasonably foreseeable acts in furtherance of the conspiracy; and the court under 1B1.2(d) as trier of fact would not convict the defendant of conspiring to commit those offenses.

Rather than repeating the extensive analyses of these individual extortions which appear in the May 26, 2000 Sentencing Memorandum, the court adopts them by reference and incorporates them into this Sentencing Memorandum. (Pp. 34-47 of the Memorandum are attached hereto as Appendix A.)

With regard to the extortion of Jesus Morales, this decision is difficult for the court, since the court engaged in extensive fact-finding as to why Jack Tocco was not responsible for any of the extortions of Nove Tocco and Paul Corrado, fact finding which was ignored by the Appeals Court decision. (Memorandum on Resentencing, 5/26/00, pp. 3-22, 33-37.)

The task of the court is also made more difficult by the fact that Jack Tocco, unlike any of the other defendants who were convicted, was acquitted of all substantive counts charging him with these extortions. This acquittal “necessarily implied” that the government failed to prove beyond a reasonable doubt that Tocco incited or procured, encouraged, promoted, approved, assisted, enabled, counseled, or commanded the commission of the extortions and failed to prove that Tocco intended to help commit or encourage the commission of the extortions. (Jury charge TR 4/20/98, p.99.) The only thing linking Jack Tocco to the Morales extortion is Nove Tocco’s claim that he talked to Anthony Corrado about Morales.

In 1991 and 1992, Morales was the operator of an illegal numbers business. Sometime earlier, Morales had met John Sciarrotta at a poolroom owned by Morales. The poolroom had closed, and Sciarrotta had approached Morales and told Morales that he might know someone who would buy it and offered to set up a meeting. Morales had heard that Robert Monro had been approached and roughed up by Sciarrotta and two other guys, so he refused Sciarrotta's offer to set up any meeting.

Later, Morales was approached at Hazel Park Race Track by Sciarrotta and told that he had a couple of friends who wanted to speak to him. Sciarrotta then introduced Morales to Nove Tocco and another person. Nove Tocco said he was looking to layoff some large numbers action, and Morales told Nove Tocco that he had the wrong guy.

The next day, Sciarrotta asked Morales why he lied to his friends and told Morales they wanted him to pay \$500.00 per week to stay in the numbers business. In order to get away from Sciarrotta, Morales told Sciarrotta he had to talk to his partner and he would let him know. Morales did not have a partner and began avoiding any contact with Sciarrotta and Nove Tocco. However, Sciarrotta eventually managed to contact Morales again; and this time Morales flatly told Sciarrotta that he would not pay.

After Morales refused to pay, Nove Tocco, Paul Corrado, and Sciarrotta decided on their own to kill Morales; and they began surveilling Morales' residence and place of business in Detroit, Michigan.

In relation to this incident, Jack Tocco and Anthony Joseph Corrado were found guilty of Count 6, Conspiracy to Interfere with Commerce by Extortion and not guilty of Count 11, Attempted Interference with Commerce by Extortion; Aiding and Abetting.

Since Count 6 was a multiple object conspiracy, and since Tocco was acquitted of each of the substantive extortions, the court must find beyond a reasonable doubt that any extortion attributable to him in Count 1 or Count 6 was foreseeable to Jack Tocco. App. Note 5 of U.S.S.G. §1B1.2(d). This is the standard that the district court applied in its most recent sentencing memorandum when it found as to each extortion that “the court as a trier of fact would not convict the defendant of conspiring to commit that offense.” (Memorandum on Resentencing, 5/26/00, p.37, 38, 39, 41, 42, 44, 45 and 47.)

The government’s theory as to why Jack Tocco should be held responsible for these extortions is that he gave permission to Nove Tocce and Paul Corrado to operate their extortions of bookmakers. Giving permission is not sufficient to hold a defendant responsible at sentencing for the acts of a co-conspirator. In United States v. Hoskins, 173 F. 3d. 351 (6th Cir. 1999), a defendant who gave a co-conspirator “permission” to buy drugs from another dealer was not responsible for the defendant’s subsequent purchase of drugs from that dealer. Something more than knowledge and permission is required. See, Wright v. United States, 182 F. 3d 458 (6th Cir. 1999).

In deciding whether to rely at all on the testimony of Nove Tocco, or to rely on any information at sentencing, the court may consider any relevant information for the purpose of sentence, provided that the information “has sufficient indicia of reliability to support its probable accuracy.” U.S.S.G. §6A1.3(b); United States v. McEntire, 153 F. 3d 424 (7th Cir. 1998); United States v. Brewster, 127 F. 3d 22 (1st Cir. 1997), cert. den., 523 U.S. 1086 (1998). The district court may rely on information at sentencing, if reliable and corroborated, and if contested, established by a preponderance of the

evidence. See, United States v. Silverman, 889 F. 2d 1531, 1534-1535 (6th Cir.), cert. denied, 507 U.S. 990 (1993). Evidence which has sufficient indicia of reliability to support the court's reliance on it is information that is corroborated. United States v. Herrera, 928 F. 2d 769, 773-774 (6th Cir.), reh'g. denied, (1991). It is error to rely on uncorroborated information, United States v. Ortiz, 993 F. 2d 204 (10th Cir. 1993). If the sentencing judge bases his or her decision on evidence that is merely speculative, the sentence should be vacated. United States v. Maliszewski, 161 F. 3d 992, 1027-1028 (6th Cir. 1998).

Consistent with the Sixth Circuit decision, the court holds the defendant responsible for the extortion of Jesus Morales.

In calculating an offense level for the extortion of Jesus Morales, the court arrives at a base offense level of 18, pursuant to 2B3.2(a). The court must then look at each specific offense characteristic to see if the actions were reasonably foreseeable as to Jack Tocco. The difficulty in this analysis is that the court has already determined that if it were sitting as a trier of fact, it would not convict the defendant of conspiring to commit this offense. It is made even more difficult by the fact that John Sciarrotta, in his plea agreement with the government on the Count 1 RICO Conspiracy, was not held accountable, for relevant conduct purposes, for the extortion of Jesus Morales. The standard for determining if each specific offense characteristic is applicable is "preponderance of the evidence."

The government contends that the defendant should be enhanced two levels under 2B3.2(b)(1) for an offense involving an express or implied threat of death, bodily injury, or kidnapping and three levels under 2B3.2(b)(3)(B) for demonstrating the ability to

carry out a threat of death, serious bodily harm, or kidnaping. This is based on Nove Tocco and Paul Corrado's contemplation of the Morales murder. The court finds that neither specific offense characteristic was reasonably foreseeable to this defendant, as the court finds that the testimony of Nove Tocco that he received permission to carry out a murder of Morales lacks the sufficient indicia of reliability to support its probable accuracy. The court can only conclude from the lengthy consideration that it has given all the evidence related to the relationship(s) and interactions between Nove Tocco and Paul Corrado, on the one hand, and Jack Tocco, on the other, is that Nove Tocco and Paul Corrado carried out their "street tax" extortions in spite of the resistance and displeasure expressed consistently and in various ways by the older members of the RICO Conspiracy. (Memorandum on Resentencing, 5/26/00, p.21.) A three level adjustment for the role in the offense under 3B1.1(b) is applicable for an offense level of 21 for the Morales extortion.

#### **Calculation of the Proper Offense Level**

Having held Jack Tocco responsible for the Jesus Morales extortion and no others, this court will now recalculate the appropriate offense level for Count 1:

	<u>Offense Level</u>	<u>Units</u>
Frontier Hotel	6	0
Versaci Gambling	16	½
Edgewater	6	0
Hobbs Act Conspiracy	21	1
Extortion Act (Morales)	21	<u>1</u>
Total Number of Units		2½



Greater Offense Level: 21  
Increase in Offense Level (3D1.4) +3

Combined Offense Level  
for Count 1: 24

With an offense level of 24 for Count 1, a total offense level of 19 for Count 2, and an offense level of 21 for Count 6, under §3D1.4, the total offense level would be calculated as follows:

	Offense Level	Units
Count 1	24	1
Count 2	19	½
Count 6	21	<u>0</u> *
Total Number of Units		1 ½
Greater Offense Level:	24	
Increase in Offense Level (3D1.4)	<u>+1</u>	
Total Offense Level	25	

\* Count 6 would not receive any units, as it would be grouped under § 3D1.2(c) with Count 1. An offense level of 25 with a criminal history of Category I produces a guideline range of 57-71 months.

### **Motion for Downward Departure**

It is already noted that the downward departure of four offense levels applied by the court in the earlier two sentences was not dealt with by the Court of Appeals and will be applied here but not discussed further.<sup>1</sup>

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<sup>1</sup>The defendant Tocco's Criminal History Category has always been determined to be I, about which there is not and has not been any conflict between the parties. Similarly, the four level departure for the extraordinary community service of the defendant made by this court in connection with both the first sentencing and the second sentencing was not at issue in the most recent appeal and was, therefore, left undisturbed by the Court of Appeals.

The defendant has moved for further downward departure based upon his bad health and that of his wife.

### **Defendant's Health**

When Tocco was resentenced for the first time in May 2000, the court concluded that no downward departure based upon his ill health would be appropriate. In large part this decision was based upon the fact that he had an uneventful, and apparently adequately provided for, period of incarceration at the Rochester Medical Facility of the Bureau of Prisons prior to being resentenced for the first time.

The defendant makes a strong argument for the proposition that his health has suffered material deterioration since his second sentencing of May 2000. Specifically, since the defendant's release from imprisonment on November 21, 2001, diagnosed coronary artery disease has required the insertion of a stent and a pace-maker. This in turn according to one of defendant's doctors, Angelo Pugliesi, has lead to decreased kidney function and chronic bronchitis.

According to the defendant and Dr. Pugliesi, the defendant's major health concerns all can be traced to his cardiac condition. Due to the defendant's frequent uncontrolled angina, doctors inserted the stent and the pacemaker. Prior to the surgery, the defendant was required to cease taking his blood thinning medication. During the surgery doctors discovered other blockages in the defendant's arteries. After the surgery, microemboli (plaque) began traveling throughout the defendant's body until stopped at a small arterial branch. Once the emboli lodges in certain areas, it stops the flow of blood to that area. The emboli traveled through the defendant's renal arteries to his kidneys, causing the defendant to develop sudden renal failure. The defendant lost

over 80% of his renal function, according to his nephrologist, and has approximately 17% renal tissue left. If the defendant has any more damage to his renal tissue, he will be required to go on dialysis. The microemboli also traveled to the defendant's toes, affecting three toes. The defendant suffered necrosis of the second and third toes. A special shoe was made for the defendant so that his toes would not touch the ground.

According to Dr. Pugliesi, there were two main causes for the microemboli. The first was the trauma caused by the cardiac catheterization. The catheterization traveled through a lot of arteries containing plaque on the walls, breaking off the emboli. The second reason was the combination of stopping the defendant's blood thinning medication prior to the surgery and the restarting of the medication after the surgery which can also cause flaking of the emboli. If the defendant starts "throwing" emboli again, he runs the risk of kidney failure and/or amputation of his toes/foot.

Other health problems are diverticulitis, which flares up every two to three days, and chronic bronchitis, which causes the defendant to spit up blood. The defendant is prescribed the following daily medications: Flomax 0.4 mg; Tenormin 50 mg; Demadex 20 mg; Warfarin 2 mg; Mevacor 20 mg; Nulev .125 mg; Antivert 25 mg; Fosamax 70 mg; and Desyrel 100 mg; and nitroglycerin 0.4 mg, (as needed).

The defendant, therefore, has demonstrated health problems which materially exceed those presented at his last sentencing in May 2000.

The government, not unreasonably, argues that the inevitable ticking of the clock, which moves all of us toward age-related disabilities, should not be used to the advantage of a defendant seeking downward departure.

The court has given due consideration to the government's argument and has

concluded that the defendant's health has declined since May 2000 and that the defendant's health now justifies a downward departure. The court also notes that during defendant's second period of incarceration his health declined markedly. The Bureau of Prisons has facilities and resources to handle most ongoing health problems, but renal failure, in particular, if it occurs, will require emergency medical attention. The court concludes downward departure based upon his present health is appropriate. The court will depart downward two offense levels because of this.

#### Mrs. Tocco's Health

The health of the defendant's wife, Maria Tocco, who is 69 years of age, is another basis upon which the defendant argues for downward departure.

Mrs. Tocco was diagnosed with right breast carcinoma (1995); emphysema (1995); cervical radiculitis (1998); osteoporosis; osteoarthritis; and fibromyalgia. Mrs. Tocco's cancer has not recurred. On May 6, 2002, Mrs. Tocco fell and broke her left hip.

A cervical spine exam performed on Mrs. Tocco on December 19, 2002, found evidence of a degenerative disc disease that was mild to moderate in extent. On January 1, 2003, Mrs. Tocco was treated for neck pain. An MRI was performed on her cervical spine. The MRI revealed the following impressions:

1. Small, broad-based disc herniation at C4-C5 with mild biforaminal encroachment.
2. Diffuse posterior disc bulging and prominent disc material involving the left exiting neural foraminal and probable degree of uncovertebral joint spurring and left foraminal encroachment at this level.
3. Diffuse posterior disc bulging and bilateral foraminal encroachment at C6-C7.

4. Left foraminal encroachment at C2-C3.
5. Overt central spinal canal stenosis or cord compression of the cervical spine was not seen.
6. Probable small disc herniation at T3-T4.
7. Partially empty sella.

On September 10, 2003, Mrs. Tocco began receiving epidural steroid injections in the hope of relieving her chronic neck pain.

Mrs. Tocco has also received mental health treatment from Dr. Lisa MacLean of the Henry Ford Health System. Defense counsel has provided the court with an October 13, 2003 letter from Dr. MacLean, detailing Mrs. Tocco's mental health concerns. In Dr. MacLean's letter she opines that Mrs. Tocco's mental health status would further regress if the defendant is again incarcerated.

Mrs. Tocco is prescribed the following medications: Synthroid 50 mcg; Valtrex 500 mg; Detrol 4 mg; Evista 60 mg; Dyazide 375 mg; Ecotrin 81 mg; Effexor 150 mg; Centrum Silver; Antivert 25 mg, as needed; Fosamax 70 mg, weekly; and Desyrel 100 mg, nightly.

However, for the reasons given at the court's resentencing of the defendant in May 2000, and considering particularly the availability to Mrs. Tocco of the support of a large family, the court again concludes that no downward departure based upon her health would be appropriate.

#### Total Departure Downward

The court, therefore, will depart downward four offense levels for defendant's extraordinary community service and two offense levels for defendant's health problems, producing a downward departure of a total of six offense levels.

#### **Final Guidelines**

A downward departure of 6 offense levels produces an offense level of 19 which, given the criminal history category (I), produces a guideline range of 30 to 37 months.

**Sentence**

The defendant Jack William Tocco is hereby sentenced to time served, which the court calculates to be 34 months, or approximately the mid-point of the guideline range.

**Forfeiture**

On December 2, 2003, the court entered a Preliminary Order of Forfeiture in a total amount of \$1,234,000.00, pending further forfeiture proceedings.

**SO ORDERED.**

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John Corbett O'Meara  
United States District Judge

Dated: \_\_\_\_\_

## **1. Robert Monro**

In 1991, Robert Monro was operating a numbers business in partnership with George Wierzba, Tommy Davis, and a person known to Monro only as "George the Greek." Monro was also laying off numbers for a time to Jesus Morales, another numbers operator. Monro utilized the Big Boy restaurant located on Michigan Avenue near Oakman Boulevard in Dearborn, Michigan, as a place to meet a runner from "George the Greek" to pick up the night's sheets. In April 1991 or May 1991, Monro met "George the Greek's" runner, and later Tommy Davis and one of Davis' runners, at the Big Boy restaurant. Davis gave Monro approximately \$15,000.00 at this meeting.

After having dinner and discussing their business, Davis and his runner left. Monro then went to his car, opened the passenger side door, and put the numbers sheets and \$15,000.00 under the passenger seat. Monro then went to the driver's side door and entered the vehicle. As he was starting to shut the door, John Sciarrotta came up to the car and forcibly held the door open. Monro had heard that John Sciarrotta had been involved in several dice game robberies and initially thought that this was a robbery. At that time a red car came up to Monro's car and stopped with its front bumper near Monro's driver's side door. Paul Corrado and Nove Tocco got out of the red car and told Monro to get in their car because they wanted to talk to him. Monro suggested they go inside the restaurant, but they told him he was going for a ride with them. Monro was then ordered to get into the red car.

At that point, Monro tried to run. Sciarrotta grabbed him by his right arm and jacket, and Paul Corrado and Nove Tocco began throwing punches. These punches initially missed, but Monro was then hit solidly in the upper chest, with what he believes

was a metallic object, and had the wind knocked out of him. Monro then lay on the rear of his car for a few minutes catching his breath, and he was again told to get in the red car.

Monro got in the front passenger seat of the red car, with Paul Corrado driving, Nove Tocco sitting in the rear behind Monro, and Sciarrotta sitting in the rear with Nove Tocco, and they all drove off from the restaurant. Paul Corrado and Nove Tocco then questioned him about his business and asked if he was still doing business with Jesus Morales. Paul Corrado and Nove Tocco then told Monro he would have to pay \$1,000.00 per month to avoid any problems with his numbers business.

At some point in time, Paul Corrado noticed that Monro was looking at the door locks, and Corrado said, "Don't worry, if we wanted you dead you'd be dead already." At that point in time, Nove Tocco put his arm around Monro's shoulder from behind.

Paul Corrado and Nove Tocco asked Monro how much money he had with him and they took \$800.00 Monro had in his wallet and told him that it was his first payment. Monro was dropped off in an alley near the Big Boy restaurant. After this incident, Monro told Tommy Davis to warn Jesus Morales about Paul Corrado, Nove Tocco, and John Sciarrotta.

Monro met Paul Corrado and John Sciarrotta at the Ram's Horn restaurant on Plymouth Road the next month and gave them \$1,000.00 in cash. Paul Corrado told Monro that \$1,000.00 per month wasn't good enough, and that it had to be \$1,000.00 every two weeks. Monro agreed to pay \$1,000.00 on the first and fifteenth of each month.



At the time for the next payment, Monro again met Sciarrotta at the Ram's Horn and paid him \$1,000.00, but Monro then told Paul Corrado he didn't want to meet Sciarrotta anymore because of Sciarrotta's bad reputation. Paul Corrado told Monro to drop off the money at Jam Sounds on Warren Avenue which Monro did until September 1991. After the September 1991 payments had been made, Monro stopped paying and got out the numbers business. In total, Monro had paid Paul Corrado, Nove Tocco, and John Sciarrotta approximately \$9,800.00 between April 1991 and September 1991.

On October 17, 1991, Paul Corrado and Nove Tocco went to Monro's house to collect the October payment but were told by Monro that he had stopped booking and would no longer pay them. Paul Corrado and Nove Tocco wanted to know how to contact Tommy Davis and George Wierzba, but Monro would not tell them.

With respect to this incident, Jack Tocco and Anthony Joseph Corrado were found guilty of Count 6, conspiracy to interfere with commerce by extortion and not guilty of Count 10, interference with commerce by extortion; aiding and abetting.

No evidences ties Jack Tocco to these acts.

The court finds that the Robert Monro extortion acts were not an underlying offense as to Jack Tocco because they were not, as to him, reasonably foreseeable acts in furtherance of the conspiracy and the court as a trier of fact would not convict the defendant of conspiring to commit that offense.

## **2. George Wierzba**

In 1992, George Wierzba was the operator of an illegal numbers business. He had been in partnership with Robert Monro, but that had ceased when Monro quit the numbers business in late 1991. Wierzba was also in partnership with Patrick Kelly, who

owned Kelly's Corner, a bookstore located on Michigan Avenue in Detroit, Michigan, near another business called Airtime Communications.

In November 1991, Wierzba was approached at the Wyoming Lunch restaurant by Paul Corrado, Nove Tocco, John Sciarrotta, and Dominic Rubino. Paul Corrado, Nove Tocco, and Wierzba were observed in the parking lot outside the restaurant. Nove Tocco pulled Wierzba's jacket up in the rear and then patted him down. Paul Corrado was then observed talking to Wierzba and poking his finger in Wierzba's chest. Wierzba tried to back away, but he was backed into the wall about 10 minutes later. After this incident, Wierzba told Kelly that he was paying \$1,000.00 "protection" money.

Wierzba paid Paul Corrado and Nove Tocco \$1,000.00 a month. On at least one occasion Wierzba left \$1,000.00 at Kelly's Corner which was picked up by John Sciarrotta. On other occasions, the \$1,000.00 was picked up by Norman Bagdasarian. Wierzba paid approximately \$14,000.00 to Paul Corrado, Nove Tocco, Sciarrotta, and Bagdasarian.

In relation to this incident, Jack Tocco and Anthony Joseph Corrado were found guilty of Count 6, conspiracy to interfere with commerce by extortion and not guilty of Count 12, interference with commerce by extortion; aiding and abetting.

No evidences ties Jack Tocco to these acts.

The court finds that the George Wierzba extortion acts were not an underlying offense as to Jack Tocco because they were not, as to him, reasonably foreseeable acts in furtherance of the conspiracy and the court as a trier of fact would not convict the defendant of conspiring to commit that offense.

#### **4. John Johns**

In early 1992, John Johns was the operator of a sports bookmaking business. Johns was accepting layoff wagers from another sports bookmaker, Sam Hakim, who operated a legitimate business known as Emily's Deli. Johns customarily met Hakim at Emily's Deli on Wednesday morning to settle up for the prior week's betting.

On January 24, 1992, Paul Corrado, Nove Tocco, and Peter Jack Corrado (Paul Corrado's brother) went to Elizabeth's By the Lake, a restaurant/bar located in St. Clair Shores, to attempt to locate Johns. Nove Tocco and Paul Corrado had earlier in the day purchased materials to make a black jack and had discussed severely beating Johns if he refused their demand to pay them.

Nove Tocco and both Corrados located Johns in the restaurant. They all went upstairs to an empty party hall area, and Johns was told that they knew he was doing business with Hakim and that he had to pay to continue to operate his sports bookmaking business. Johns told them he had to talk it over with his father and that he would get back to them.

Johns was later approached by Paul Corrado at Emily's Deli when Johns went there to settle up with Hakim. Paul Corrado told Johns that Hakim had taken care of Johns' problem. Johns stated that Hakim then shorted him \$300.00 in settling up their wagers. Hakim told Johns that he had paid \$300.00 to Paul Corrado and Nove Tocco on Johns' behalf. Johns stated he then stopped doing business with Hakim, stopped booking for awhile, and avoided any further contact with Paul Corrado and Nove Tocco.

In relation to this incident, Jack Tocco and Anthony Joseph Corrado were found guilty of Count 6, conspiracy to interfere with commerce by extortion and not guilty of

Count 17, attempted interference with commerce by extortion; aiding and abetting.

No evidences ties Jack Tocco to these acts.

The court finds that the John Johns extortion acts were not an underlying offense as to Jack Tocco because they were not, as to him, reasonably foreseeable acts in furtherance of the conspiracy and the court as a trier of fact would not convict the defendant of conspiring to commit that offense.

### **5. George Sophiea**

In 1992, George Sophiea was the operator of a sports bookmaking business. Sophiea employed Thomas Toumajian as a writer in his bookmaking business.

In April 1992, Sophiea was approached by Paul Corrado, Nove Tocco, and Peter Jack Corrado at Hogan's Restaurant in West Bloomfield. Paul Corrado was armed at the time with a handgun.

Sophiea agreed to pay \$500.00 per month "protection" money. Toumajian met Nove Tocco on numerous occasions to pay Nove Tocco. Sophiea paid because he believed Nove Tocco and the others were connected to the "mob." These payments lasted until September 1995 and totaled approximately \$20,500.00.

With respect to this incident, Jack Tocco and Anthony Joseph Corrado were found guilty of Count 6, conspiracy to interfere with commerce by extortion; Anthony Corrado was also found guilty of Count 24, interference with commerce by extortion; aiding and abetting, while Jack Tocco was acquitted of this count.

No evidences ties Jack Tocco to these acts.

The court finds that the George Sophiea extortion acts were not an underlying offense as to Jack Tocco because they were not, as to him, reasonably foreseeable

acts in furtherance of the conspiracy and the court as a trier of fact would not convict the defendant of conspiring to commit that offense.

## **6. Ramzi Yaldoo**

Ramzi Yaldoo had been the operator of an illegal numbers business since 1982. In the past he had laid off numbers to George Wierzba. Yaldoo owned the Liquor Locker and Airtime Communications located on Michigan Avenue in Detroit, Michigan. John Jarjosa informed Paul Corrado and Nove Tocco about Yaldoo's numbers operation.

Yaldoo was also acquainted with John Sciarrotta. Sometime in 1992, Sciarrotta went into Airtime Communications and told Yaldoo some friends were interested in Yaldoo's numbers business and wanted to meet him. Yaldoo told Sciarrotta he did not want to meet anyone.

Yaldoo was later followed to work by Sciarrotta and other persons. Sciarrotta went into the store and told Yaldoo his friends were outside. Yaldoo then met Paul Corrado and Nove Tocco outside Airtime Communications, and they told him he had to pay the cost of doing business in order to continue the numbers business. Yaldoo said he wasn't paying because he wasn't doing any business. Paul Corrado and Nove Tocco told him to pay or stop.

Paul Corrado and Nove Tocco then decided to bomb Yaldoo's car to get him to pay. On May 9, 1992, Paul Corrado and Peter Anthony Corrado (the son of Anthony Corrado) detonated a test explosion. On May 13, 1992, Paul Corrado and Peter Anthony Corrado purchased materials to make a second device and went to Paul Corrado's residence to assemble it. On June 2, 1992, Paul Corrado, Nove Tocco, and

John Sciarrotta attempted to bomb Yaldoo's car, which was parked outside Airtime Communications on Michigan Avenue. The plan was for Sciarrotta in one car to use a BB-gun to shoot out the rear window of Yaldoo's car, and Paul Corrado, in a car driven by Nove Tocco, to then light the pipe bomb and throw it into Yaldoo's car. They discontinued the attempt to bomb the car because after going to the location of Airtime Communications on Michigan Avenue, they decided there were too many people on the street.

Abandoning the bombing plan, Paul Corrado and Nove Tocco then decided to shoot out the windows at Airtime Communications to send a message to Yaldoo. On June 16, 1992, Nove Tocco drove the car while Paul Corrado, in the back seat of the car, shot out the store windows with a rifle. This act was observed by FBI agents.

When Yaldoo found out about the windows, he contacted John Jarjosa and they both went to meet Tom Lenhard to discuss the situation. Lenhard told Yaldoo that someone was sending him a message, and that he had better pay. Lenhard was paid by Paul Corrado and Nove Tocco for his helpful advise to Yaldoo. Jarjosa then set up a meeting with Paul Corrado and Nove Tocco at Trappers Alley in Greektown. Jarjosa told Yaldoo that Paul Corrado and Nove Tocco were "Mafia." When they reached the meeting, Nove Tocco patted Yaldoo down. They told Yaldoo that he had to pay to continue doing his numbers business. Yaldoo agreed to pay \$1,100.00 per month, usually on or about the fifteenth of each month. Between July 1992 and July 1995, Yaldoo paid approximately \$39,600.00.

In July 1995 and sometime later, Yaldoo was again contacted by Nove Tocco. Nove Tocco attempted to obtain \$5,000.00 from Yaldoo as a final payment because Nove Tocco needed money to pay an attorney.

With respect to this incident Jack Tocco and Anthony Joseph Corrado were found guilty of Count 6, conspiracy to interfere with commerce by extortion. Anthony Joseph Corrado was also found guilty of Count 13, interference with commerce by extortion; aiding and abetting, while Jack Tocco was acquitted of this count.

No evidences ties Jack Tocco to these acts.

The court finds that the Ramzi Yaldoo extortion acts were not an underlying offense as to Jack Tocco because they were not, as to him, reasonably foreseeable acts in furtherance of the conspiracy and the court as a trier of fact would not convict the defendant of conspiring to commit that offense.

## **7. George Yatooma**

In 1992, George Yatooma was the operator of an illegal numbers business and had been one for over fifteen years. Yatooma was a close friend of Ramzi Yaldoo. John Jarjosa advised Paul Corrado and Nove Tocco about Yatooma and assisted them in contacting and extorting Yatooma.

Yatooma had heard about Nove Tocco and Paul Corrado extorting people and had successfully avoided being contacted by them for some time. However, Yatooma was finally tracked down by Nove Tocco telephonically, and he agreed to meet Nove Tocco. They met at Elizabeth's By the Lake, where Nove Tocco told Yatooma that the "old men" knew who he was and that he had to pay \$1,500.00 to stay in business. Yatooma thought that Nove Tocco represented the "Mafia" and knew that Yaldoo's store

windows had been shot out. Yatooma agreed to pay \$1,500.00 a month. Most of the payments were made at the Sahara restaurant in Oak Park. Yatooma paid Nove Tocco approximately \$49,500.00 from October 1992 through July 1995.

In July 1995, Yatooma and Ramzi Yaldoo were again contacted by Nove Tocco. Nove Tocco attempted to obtain \$5,000.00 from Yaldoo and Yatooma as a final payment because Nove Tocco needed money to pay an attorney.

With respect to this incident, Jack Tocco and Anthony Joseph Corrado were found guilty of Count 6, conspiracy to interfere with commerce by extortion. Anthony Joseph Corrado was also found guilty of Count 20, interference with commerce by extortion; aiding and abetting, while Jack Tocco was acquitted of this count.

No evidences ties Jack Tocco to these acts.

The court finds that the George Yatooma extortion acts were not an underlying offense as to Jack Tocco because they were not, as to him, reasonably foreseeable acts in furtherance of the conspiracy and the court as a trier of fact would not convict the defendant of conspiring to commit that offense.

#### **8. Sam Martin and 9. Daniel Abraham**

In 1992, Sam Martin was the operator of a sports bookmaking business which was being financed by Daniel Abraham. John Jarjosa told Paul Corrado and Nove Tocco about Martin and Abraham.

In 1992, Martin was approached by Nove Tocco in the Kenilworth Pub. Nove Tocco told him he wanted money for "street protection." Martin told Nove Tocco he didn't have any money. In September 1992, Nove Tocco again approached him at the Kenilworth Pub and told Martin if he did not pay he would be out of business. Martin



told Abraham about these meetings and stopped doing “pay and take” at the Kenilworth Pub.

Daniel Abraham was then contacted by Nove Tocco. Abraham met Nove Tocco and Paul Corrado at his place of business, Drink’s Saloon, which is located in Brownstown Township. Abraham agreed to pay \$400.00 per month “street tax” to them. Abraham paid for three or four months and then told Nove Tocco he was going out of business.

With respect to this incident, Jack Tocco and Anthony Joseph Corrado were found guilty of Count 6, conspiracy to interfere with commerce by extortion. Anthony Joseph Corrado was also found guilty of Count 21, attempted interference with commerce by extortion; aiding and abetting, and Count 23, interference with commerce by extortion; aiding and abetting. Jack Tocco was acquitted of Counts 21 and 23.

No evidences ties Jack Tocco to these acts.

The court finds that the Sam Martin and Daniel Abraham extortion acts were not an underlying offense as to Jack Tocco because they were not, as to him, reasonably foreseeable acts in furtherance of the conspiracy and the court as a trier of fact would not convict the defendant of conspiring to commit that offense.